

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION

PATRICIA CONTRERAS

VS.

SAM'S EAST, INC.

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§

CIVIL ACTION NO.: 5:21-cv-68

JURY DEMANDED

**DEFENDANT'S NOTICE OF REMOVAL**

Defendant, Sam's East, Inc. files this Notice of Removal pursuant to 28 U.S.C. § 1441, as follows:

**Commencement and Service**

1. On May 25, 2021, Plaintiff, Patricia Contreras commenced this action against Sam's East, Inc. by filing Plaintiff's First Amended Petition in the 111<sup>th</sup> Judicial District Court of Webb County, Texas, Cause No. 2021CVA000694D2; *Patricia Contreras v. Sam's East, Inc.* A copy of Plaintiff's First Amended Petition is attached hereto as **Exhibit A**. Sam's East, Inc. received service of process and Plaintiff's Original Petition on June 7, 2021.<sup>1</sup> A copy of CT Corporation Service of Process Transmittal and Citation with Plaintiff's Original Petition are attached hereto as **Exhibit B**. A copy of CT Corporation Service of Process Transmittal and Citation with Plaintiff's First Amended Petition are attached hereto as **Exhibit C**.

2. On June 18, 2021, Sam's East, Inc. filed its Original Answer to Plaintiff's First Amended Petition which is attached as **Exhibit D** and Demand for Jury Trial, attached as **Exhibit E**.

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<sup>1</sup> Plaintiff's Original Petition incorrectly named Sam's Club, LLC as the defendant to this lawsuit. The entity Sam's Club, LLC is in no way related to the retail store Sam's Club. After advising Plaintiff's counsel of the proper party to be named and served, Plaintiff filed an Amended Petition naming the correct Defendant, Sam's East, Inc. Citation was issued to Sam's East, Inc. and served on the registered agent for service, but the incorrect petition (Plaintiff's Original Petition) was attached to said citation. Counsel for Sam's East, Inc. notified Plaintiff's counsel of the error and thereafter citation was issued again to Sam's East, Inc. and service was properly effectuated on June 16, 2021 with the correct pleading (Plaintiff's First Amended Petition).

3. This notice of removal is filed within thirty days (30) of the receipt of the Plaintiff's First Amended Petition which discloses that this matter involves an amount in controversy exceeding \$75,000.00, and is timely filed under 28 U.S.C. § 1446(b). This notice of removal is filed within one year of the commencement of this action and is thus timely pursuant to 28 U.S.C. § 1446(b).

#### **Grounds for Removal**

4. Sam's East, Inc. is entitled to remove the state court action to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 because this action is a civil action involving an amount in controversy exceeding \$75,000.00 between parties with diverse citizenship. **(See page 1, third paragraph of Plaintiff's First Amended Petition – Exhibit A).**

#### **Diversity of Citizenship**

5. This is an action between parties with diversity of citizenship.

6. Plaintiff is a resident of Laredo, Webb County, Texas.

7. Defendant Sam's East, Inc. is an Arkansas corporation with its principal place of business in Bentonville, Arkansas. Based on the forgoing, Defendant, Sam's East, Inc. is not a Texas citizen.

8. No change of citizenship has occurred since commencement of the state court action. Accordingly, diversity of citizenship exists among the parties.

#### **Amount in Controversy**

9. The amount in controversy exceeds the sum of \$75,000. **(See page 1, third paragraph of Plaintiff's First Amended Petition – Exhibit A).**

**Venue**

10. Venue lies in the Southern District of Texas, Laredo Division, pursuant to 28 U.S.C. §§ 1441(a) and 1446(a) because the Plaintiff filed the state court action in this judicial district and division.

**Notice**

11. Contemporaneous with the filing of this notice of removal, Defendant will give notice of this filing to all parties of record pursuant to 28 U.S.C. § 1446(d). Defendant will also file with the clerk of the state court, and will serve upon Plaintiff's counsel and all other parties' counsel of record, a notice of the filing of this notice of removal.

**Jury Demand**

12. Defendant, Sam's East, Inc. demanded a jury trial in the state court action.

**State Court Pleadings**

13. Copies of state court pleadings which are referenced within the Notice are attached to this Notice of Removal as **Exhibits A through D**. This case is being removed from the 111<sup>th</sup> Judicial District Court, Webb County, Texas.

**Exhibits to Notice of Removal**

14. The following documents are attached to this Notice as correspondingly lettered exhibits:
- A. Plaintiff's First Amended Petition.
  - B. CT Corporation Service of Process Transmittal and Citation with Plaintiff's Original Petition.
  - C. CT Corporation Service of Process Transmittal and Citation with Plaintiff's First Amended Petition.
  - D. Defendant's Original Answer to Plaintiff's First Amended Petition.
  - E. Defendant's Demand for Jury Trial.
  - F. District Clerk's Register of Actions.
  - G. List of Counsel of Record.

WHEREFORE, Defendant, Sam's East, Inc. pursuant to the statutes cited herein and in conformity with the requirements set forth in 28 U.S.C. § 1446, removes this action from 111<sup>th</sup> Judicial District Court, Webb County, Texas.

Respectfully submitted,

DAW & RAY  
A LIMITED LIABILITY PARTNERSHIP

*/s/ James K. Floyd*

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**ATTORNEYS FOR DEFENDANT**

### **CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the above and foregoing instrument has been served upon all known counsel of record in accordance with the FRCP on this the 7<sup>th</sup> day of July, 2021.

David Bernsen  
Cade Bernsen  
Jamie Matuska  
The Bernsen Law Firm  
420 Beaumont, Texas 77701  
**ATTORNEY FOR PLAINTIFF**

*/s/ James K. Floyd*

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James K. Floyd